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In re Application of :
FRITZ et al. :
Application No.: 10/018,623 : DECISION
PCT No.: PCT/EP00/05632 :
Int. Filing Date: 19 June 2000 :
Priority Date: 18 June 1999 :
Attorney's Docket No.: 3993.003 :
For: RADIATION SOURCE FOR :
ENDOVASCULAR RADIATION TREATMENT :

This decision is in response to applicant's "PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION" filed on 08 April 2003.

BACKGROUND

On 19 June 2000, applicant filed international application PCT/EP00/05632, which designated the United States and claimed a priority date of 18 June 1999 (18 June 2000 was a Sunday). A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 06 December 2000. Accordingly, the thirty-month period for paying the basic national fee in the United States expires at midnight on 18 December 2001.

On 18 December 2001, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, an assertion of small entity status, the U.S. Basic National Fee for a small entity, and the surcharge for a small entity under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 21 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 22 March 2002, applicants filed a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES

DESIGNATED/ELECTED OFFICE", which was accompanied by an executed declaration of inventors.

On 04 April 2002, the DO/EO/US mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 indicating a 35 U.S.C. 371(c) date of 22 March 2002.

On 08 April 2003, applicants filed the instant "PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION," which was accompanied by, *inter alia*, a copy of a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE", a copy of a declaration of inventors, a copy of a date-stamped postcard receipt, and a copy of a NOTIFICATION OF ABANDONMENT (FORM PCT/DO/EO/909).

DISCUSSION

The petition filed 08 April 2003 is directed to application number 10/018,623, titled "RADIATION SOURCE FOR ENDOVASCULAR TREATMENT", attorney docket number 3993.03, and inventors Eberhard Fritz and Gerd Phillipps.

The copy of the NOTIFICATION OF ABANDONMENT accompanying the petition filed 08 April 2003 indicates the application number as 10/018,619, the first-named applicant as Eberhard Fritz, the attorney docket number as 3993.003 and indicates a mailing date for a NOTIFICATION OF MISSING REQUIREMENTS as 15 February 2002. The copy of the "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE" filed 08 April 2003 contains the same identifying information as the petition but refers to a NOTIFICATION OF MISSING REQUIREMENTS mailed 21 February 2002.

The copy of the declaration of inventors filed 22 March 2002 identifies the application number as 10/018,623.

The postcard receipt date-stamped 22 March 2002 identifies the application number as 10/018,623, the inventors as E. Fritz and G. Phillips, the title as "RADIATION SOURCE FOR ENDOVASCULAR RADIATION TREATMENT", and the attorney docket number as 3993.03.

Petition Under 37 CFR 1.181

The petition under 37 CFR 1.181 is moot; as noted above, the submission filed 22 March 2002 was entered and processed in application number 10/018,623.

Petition Under 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is also moot; application number 10/018,623 has not

yet gone abandoned.

If applicant intends to revive application number 10/018,619 (the application number on the copy of the NOTIFICATION OF ABANDONMENT accompanying the petition), a petition must be filed for that application which properly identifies that application. A comparison of the Transmittal Letter for 10/018,619 and the Transmittal Letter for 10/018,623 show that for the two applications, the title, inventors, and attorney docket number are the same. Given the situation, **applicants should use great care to indicate the correct application number as it is the only reliable indicator used by applicant which is different in the two applications.** (Applicant has indicated different dates in the indication for the identifier "Filed" for application number 10/018,623. For example, the "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE" filed 22 March 2002 indicates the application as having been filed on 17 December 2001. Note that this response seems to have been directed to the 10/018,623 application since it refers to the NOTIFICATION OF MISSING REQUIREMENTS mailed 21 February 2002. The Information Disclosure Statement filed 30 May 2002 in application number 10/018,623 indicates the application as having been filed on 18 December 2001. Thus, the "Filed" field is not a reliable indicator.)

The declaration of inventors filed 22 March 2002 is not in compliance with 37 CFR 1.497(a)-(b) because it fails to properly identify the application being executed. The declaration identifies the application being executed as 10/018,623 filed 17 December 2001. However, the request to enter the national stage for application 10/018,623 was filed 18 December 2001. Accordingly, the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America were not completed as of the 35 U.S.C. 102(e) and 371 dates indicated in the NOTIFICATION OF ACCEPTANCE mailed 04 April 2002. Accordingly, the 04 April 2002 NOTIFICATION OF ACCEPTANCE is hereby VACATED. (Also, the declaration filed 22 March 2002 includes a claim to a European priority application 9911099.0 filed 18 June 1999. However, the PCT application which application number 10/018,623 is a national stage of claims priority to European priority application 99111100.6 filed 18 June 1999.)

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** as **MOOT**.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is also **DISMISSED** as **MOOT**.

Applicants are required to file in application number 10/018,623 a declaration of inventors in compliance with 37 CFR 1.497(a)-(b) within **ONE (1) MONTH** from the date of mailing of this decision. *Failure to timely file a proper reply will result in abandonment of the application.* **Note that the Final Office Action mailed 03 June 2003 remains in effect.** Consequently, two

time periods are running against the above-mentioned application. See MPEP § 710.04.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to Art Unit 3736 for consideration of the proposed After Final Amendment filed 05 September 2003.



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